

1. This is an action for a writ in the nature of injunctive and declaratory relief, authorized by: 28 U.S.C. §1331, 28 U.S.C. §1361, the mandamus statute; 5 U.S.C. §702, the Administrative Procedure Act; and 5 U.S.C. §552(a)(4)(B).
2. Plaintiff files this action to compel the Defendants to immediately produce the Plaintiff's file under the terms of the FOIA statute so that he can properly defend himself in removal proceedings. The Plaintiff is in removal proceedings before the Honorable Judge Anthony S. Murry in San Francisco, California. The Immigration Judge ("IJ") has scheduled the Plaintiff's final hearing on April 9, 2009 at 1:00PM. He has refused to grant a request for a brief adjournment due to the unavailability of the Plaintiff's counsel in removal proceedings. The Plaintiff will be renewing his request for a continuance in view of this mandamus action to secure a copy of his file in order to mount a proper defense against removal/deportation.

PARTIES

3. Plaintiff Jose Luis Gutierrez-Blandon is an alien Respondent in removal proceedings before the Executive Office for Immigration Review in San Francisco, California. He is detained in the custody of San Francisco's Immigration & Customs Enforcement, although he is solely charged with removability under 8 U.S.C. §1182(a)(6)(A)(i) for having allegedly entered without inspection or parole. Presently, his individual hearing is scheduled for April 9, 2009 at 1:00PM, the Immigration Judge (Anthony S. Murry), having denied a motion for a continuance on March 30, 2009.
4. Defendant Catherine M. Papoi is the Deputy Chief FOIA Officer and Director of Disclosure & FOIA at The Privacy Office in the Department of Homeland Security. She is identified as "the principal FOIA contact" for FOIA requests pertaining to the Department of Homeland Security. <http://www.usdoj.gov/oip/foiacontacts.htm>.

5. According to the Department of Justice's website, the DOJ has "a decentralized system for handling FOIA requests." http://www.usdoj.gov/oip/04_4.html. The result is that individual contacts are assigned to specific components of the DOJ. Defendant Cecelia M. Espenosa is identified as the contact person for FOIA requests involving the Executive Office for Immigration Review. She is the Senior Associate General Counsel for the Office of the General Counsel.
6. Defendant Jill Eggleston is the FOIA Officer in U.S. Citizenship & Immigration Services' FOIA/PA Program. She is the "principal FOIA contact" for FOIA requests involving U.S. CIS. <http://www.usdoj.gov/oip/foiacontacts.htm>.
7. Defendant Catrina Pavlik-Keenan is the "principal FOIA contact" for FOIA requests pertaining to U.S. Immigration and Customs Enforcement. <http://www.usdoj.gov/oip/foiacontacts.htm>.
8. Defendant Eric H. Holder, Jr. is the Attorney General of the United States and is responsible for the administration of the immigration laws under 8 U.S.C. §1103 and the implementation and enforcement of the Immigration and Nationality Act and its implementing regulations.

JURISDICTION

9. Jurisdiction in this case is proper under: 28 U.S.C. §§1331, the general federal question jurisdictional statute; 5 U.S.C. §701 *et seq.*, the Administrative Procedure Act; 28 U.S.C. §2201 *et seq.*; 28 U.S.C. §1361, the mandamus statute; 5 U.S.C. §702, the Administrative Procedure Act; and 5 U.S.C. §552(a)(4)(B).

VENUE

10. Venue is proper in this court pursuant to 28 U.S.C. §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides and where a substantial part of the events or omissions giving rise to the Plaintiff's claim occurred. Assignment to the San Francisco division is proper pursuant to Local Rule 3-2(c) because a substantial portion of the events giving rise to this action occurred in this district and division, where the Plaintiff's removal proceedings are being held and where his file is presumably held in the custody of the San Francisco Immigration and Customs Enforcement's Office of Chief Counsel.

EXHAUSTION OF REMEDIES

11. FOIA, 5 U.S.C. §552, mandates disclosure of records held by a federal agency in response to a request for such records by a member of the public, unless the records fall within certain narrow statutory exemptions.
12. "A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, 'sunlight is said to be the best of disinfectants.' In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government." President Barack Obama, Memorandum of January 21, 2009 for the Heads of Executive Departments and Agencies, Fed. Reg. Vol. 74, No. 15, 4683, January 26, 2009. "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The FOIA gives individuals a "judicially-enforceable right of access to government agency documents." *Lion Raisins, Inc. v. USDA*, 354 F.3d 1072, 1079 (9th Cir.

2004). The U.S. Supreme Court has interpreted the disclosure provisions of the FOIA broadly. See, *John Doe Agency v. John Doe Corp.*, 493 U.S. 16, 152 (1989); *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) ("disclosure, not secrecy, is the dominant objective of the [Freedom of Information] Act").

13. Plaintiff has exhausted his administrative remedies to the extent required by law. A FOIA requestor is deemed to have exhausted all administrative remedies if the agency fails to comply within the statutory time limits. 5 U.S.C. §552(a)(6)(C)(I).
14. FOIA requires the agency to timely disclose all records responsive to a FOIA request that do not fall within nine narrowly construed statutory exemptions. 5 U.S.C. §552(a)(3)(A); 5 U.S.C. §552(b)(1)–(b)(9).

PROCEDURAL HISTORY

15. The Plaintiff is 29-year old native and citizen of Nicaragua. He is presently detained at Yuba County Jail in Marysville, California by Immigration and Customs Enforcement. He is in removal/deportation proceedings and has been charged with unlawfully entering the United States in violation of 8 U.S.C. §1182(a)(6)(A)(i). His final individual hearing is scheduled for Thursday, April 9, 2009 at 1:00PM. The Plaintiff filed a timely request for a continuance of the hearing due to the unavailability of the Plaintiff's counsel. The Government opposed on two spurious grounds. First, the Government suggested that another attorney in the Plaintiff's counsel's office could attend the hearing, a plain violation of 8 U.S.C. §1229a(b)(4)(A), the mandatory right to "counsel of the alien's choosing." Secondly, the Government expressed grave anxiety over the "great expense" of detaining the Plaintiff, who is again, charged solely with unlawful entry and not due to any criminal convictions, although the Plaintiff has been arrested and convicted in the past.
16. The Honorable Judge Anthony S. Murry denied the Plaintiff's reasonable request as "no

good cause has been established for the motion/request.” No further explanation was offered. The unavailability of the Plaintiff’s counsel of record was deemed insufficient cause to justify a continuance. These matters are discussed to express the urgency with which the Plaintiff needs a copy of his file under the FOIA and to either obtain the information or evidence, or secure a continuance pending receipt of the Plaintiff’s file from the agency.

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17. The Supreme Court has held that “counsel’s failure to look at the file fell below the line of reasonable practice.” *Rompilla v. Beard*, 545 U.S. 374, 377 (2005). The Supreme Court quoted the American Bar Association’s Standards for Criminal Justice: “It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case...The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities.” *Id.*, at 375, citing 1 ABA Standards for Criminal Justice 4-4.1 (2d Ed. 1982 Supp.). The Plaintiff is unable to mount an effective defense against removal/deportation when the agency will not timely comply with a request for the records. The Plaintiff is caught in a Catch-22—he cannot timely secure a copy of his file under the FOIA in order to properly defend himself, yet, he is forced to proceed without his file in removal proceedings. To make matters more unfair, he is being detained while the agency drags its feet and the Immigration Judge refuses reasonable requests for an adjournment due to unavailability of his counsel.
 18. The Plaintiff filed his request for his file under the FOIA on October 15, 2008. His file is particularly important and crucial because his mother applied for asylum and was granted lawful permanent residence some years ago. Some of this documentation should be in the Plaintiff’s file since he would have been identified as a derivative. Under 8 U.S.C. §1158(a)(2)(B), an alien must “demonstrate[] by clear and convincing evidence that the

application has been filed within 1 year after the date of alien's arrival in the United States." Here, the only way that the Plaintiff can demonstrate that he timely filed his asylum application is if he utilizes the date of filing of his mother's application. He will otherwise be deemed ineligible for asylum, the primary application for relief for which he is applying. Additionally, his mother's application may offer a basis for applying for relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA). NACARA provides various forms of immigration benefits and relief from deportation to certain Nicaraguans, Cubans, Salvadorans, Guatemalans, nationals of former Soviet bloc countries and their dependents.

CAUSE OF ACTION

19. Plaintiff repeats and re-alleges the factual allegations contained in paragraphs 1 through 18 above, inclusive.
20. Plaintiff has a legal right under FOIA to obtain his agency file requested from the agency on October 15, 2008. There exists no basis for the Defendants failure to make his file available in a timely manner.
21. Defendants' failure to timely produce the agency records sought by the Plaintiff violates FOIA, 5 U.S.C. §552(a)(6)(A)(i), which provides that "upon any request for records," the agency "shall" determine "within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request" and "shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." It has now been more than five months since the Plaintiff filed his request, well beyond any 20-day period.

22. Agency action “for which there is no other adequate remedy in a court” is reviewable under the Administrative Procedure Act. 5 U.S.C. §704. *See, e.g., Bennett v. Spear*, 520 U.S. 154, 175 (1997); *Japan Whaling Ass’n v. Am. Cetacean Society*, 478 U.S. 221, 230 n.4 (1986) (§704 creates a “right of action” absent clear and convincing evidence of legislative intention to preclude review). The Plaintiff has no alternative but to file this action in view of the delay and his imminent final hearing on April 9, 2009.

PRAYER

WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Court award him the following relief:

- a. Order all Defendants to conduct a reasonable search for all responsive records;
- b. Order all Defendants to promptly disclose the requested records in their entirety, and make copies available to Plaintiff;
- c. Provide for expeditious proceedings in this action pursuant to 28 U.S.C. §1657;
- d. Awarding Plaintiff their reasonable costs and attorney’s fees; and
- e. Grant such other relief at law and in equity as justice may require and the Court deems just and proper.

I remain, respectfully yours,

IMMIGRATION PRACTICE GROUP, P.C.


TERESA SALAZAR COSMOS
Counsel for Plaintiff

CC:

Department of Homeland Security
Catherine M. Papoi, Deputy Chief FOIA Officer
Director, Disclosure & FOIA
The Privacy Office
245 Murray Drive, S.W. STOP-0550
Washington, DC 20528-0550

U.S. Citizenship & Immigration Services
Jill Eggleston, FOIA Officer
FOIA/PA Program
150 Space Center Loop, Suite 300
Lee's Summit, MO 64064-8010

U.S. Immigration and Customs Enforcement
Catrina Pavlik-Keenan
800 N. Capitol Street Fifth Floor, Suite 585
Washington, D.C. 20536

Cecelia M. Espenosa, Senior Associate General Counsel
Office of the General Counsel
Executive Office for Immigration Review
Department of Justice
Suite 2600, 5107 Leesburg Pike
Falls Church, VA 22041

Eric H. Holder, Jr., Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

A

U.S. Department of Homeland Security
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

October 15, 2008

NRC2008060940

Christopher J. Stender
Attorney at Law
555 Clay Street
San Francisco, CA 94111-3029

Dear Christopher J. Stender:

We received your request for information relating to Jose Luis Gutierrez Blandon on October 15, 2008.

Your request is being handled under the provisions of the Freedom of Information Act (5 U.S.C. § 552). It has been assigned the following control number: NRC2008060940. Please cite this number in any further inquiry about this request.

In accordance with Department of Homeland Security Regulations (6 C.F.R. § 5.3(c)), your request is deemed to constitute an agreement to pay any fees that may be chargeable up to \$25.00. Fees may be charged for searching for records sought at the respective clerical, professional, and/or managerial rates of \$4.00/\$7.00/\$10.25 per quarter hour, and for duplication of copies at the rate of \$.10 per copy. The first 100 copies and two hours of search time are not charged, and the remaining combined charges for search and duplication must exceed \$14.00 before we will charge you any fees. Most requests do not require any fees; however, if fees in excess of \$25.00 are required, we will notify you beforehand.

Additionally, we respond to requests on a first-in, first-out basis and on a multi-track system. This is to inform you that your request has been placed in the complex track. Since your request is on the complex track, you may wish to modify it to identify a specific document(s), the exact information sought, and location if known. Upon receipt, we will reconsider your request for eligibility for the faster track.

This office is now able to offer you the option of having your records copied to a Compact Disc (CD) for use on your personal computer. This option is an alternative to paper copies. The CD is readable on all computers through the use of Adobe Acrobat software. A version of Adobe Acrobat will be included on the CD. Your records can be viewed on your computer screen and can be printed onto paper. Only records 15 pages or more are eligible for CD printing. Attorneys automatically receive CDs, unless they contact us to request paper copies. Once an attorney has requested paper copies, all future responsive records will be provided via paper – there is no need to call again. For individuals (i.e., non-attorneys) please call our office at 816-350-5570 to order your record on CD. Once you request your records on either CD or paper, all future records will be furnished in the format you have requested.

In order to continue processing your request, we ask that you provide the following: Other Documentation. Please note your control number with any correspondence you send. Please provide this information within 30 days, otherwise your request will be administratively closed as a failure to comply. "To ensure we are releasing the correct records to you and or your client, please provide us with the following information concerning the subject of the record: country of birth, date of entry and port of entry to the United States, and parents' names."

www.uscis.gov

20081015
86800

NRC2008060940

Page 2

USCIS no longer collects Social Security Numbers in connection with FOIA or PA requests. When forwarding to us any documents related to your request, please ensure any Social Security Numbers on the documents are blanked out or removed.

You may check the status of your FOIA request online, at www.uscis.gov. Go to the "Freedom of Information Act" link at the bottom of the web page and then click on "FOIA Request Status Check" listed under the "Related Links" and follow the instructions. If you have any questions concerning your pending FOIA/PA request, please address them to this office, Attention: FOIA/PA Officer, or call us at 816-350-5570, or fax any FOIA/PA related correspondence to 816-350-5785. If you have questions concerning the status of a pending Application or Petition or any other type of immigration matter, you must contact your local District Office or call the National Customer Service Unit at 1-800-375-5283. The National Records Center cannot assist you concerning any pending Applications or Petitions or any other type of immigration matter.

Sincerely,



T. Diane Cejka
Director

U.S. Department of Homeland Security

October 16, 2008

P.O. Box 648010
Lee's Summit, MO 64064-8010

NRC2008060940

Based upon the information you provided for the records subject, we are unable to locate records responsive to your request or need additional information to complete your request. Please provide us with as much of the information listed below as possible. **Submit this form with your reply.**

Information must be provided within 30 days; otherwise your request will be administratively closed as a failure to comply.

- ☒ Alien Number
- ☒ Correct Application / Petition Receipt Number
- ☒ Copy of Passport or Visa
- ☒ Names of parents
- ☒ Any other names previously used
- ☒ Copy of INS / BCIS / ICE documents received from the agency
- ☒ I-94 number
- ☒ Birth date
- ☒ Date of Entry
- ☒ Port of Entry
- ☒ Other: Please provide any other additional information related to subject

B

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
630 SANSOME STREET, SUITE 475
SAN FRANCISCO, CA 94111

DATE: February 26, 2009

RE: GUTIERREZ-BLANDON, JOSE LUIS
FILE: A# 200-085-797

TO: ATTORNEY STENDER, CHRISTOPHER J.

Please take notice that the above captioned case has been scheduled for a **BOND/MASTER/INDIVIDUAL** hearing before the Immigration Court

on April 21, 2009 at 1:00 AM/PM
630 SANSOME STREET - 4th FLOOR, COURTROOM 3
SAN FRANCISCO, CA 94111

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions: (1) You may be taken into custody by the Department of Homeland Security and held for further action. OR (2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT SAN FRANCISCO, CA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A list of free legal service providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 or 703-305-1662.

Application: J-589 E-42B, E-42A, I-485, I-191, other: [REDACTED] due by: 4/21/09

Attorney brief due by: _____ DHS brief due by: _____

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (X) FAX (F)

TO: [] ALIEN [] ALIEN c/o Custodial Officer [X] ALIEN's ATT/REP [X] DHS

DATE: _____ BY: COURT STAFF

Attachments: [] FINGERPRINT REFERRAL [] Legal Services List [] Biometrics Served [] Other

C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
120 MONTGOMERY ST., SUITE 800
SAN FRANCISCO, CA 94104

ROBLES, MARTIN A.
555 CLAY STREET
SAN FRANCISCO, CA 94111

Date: Mar 30, 2009

File A200-085-797

In the Matter of:
GUTIERREZ-BLANDON, JOSE LUIS

Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee (\$110.00).

Enclosed is a copy of the oral decision.

Enclosed is a transcript of the testimony of record.

You are granted until _____ to submit a brief to this office in support of your appeal.

Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

Immigration Court Clerk

UL

cc: NOHARA, SHERRY A.
120 MONTGOMERY STREET, STE 200
SAN FRANCISCO, CA 941040000

ative Office for Immigration Review
 Immigration Court
 630 Sansome Street, Suite 475
 San Francisco, CA 94111

In the Matter of:

File Number: **A#200-085-797****JOSE LUIS GUTIERREZ-BLANDON**

Respondent(s)

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of (X) Respondent's/Counsel's () Government's (X) Motion to () Request for

- (X) Continue hearing from INDIVIDUAL hearing: APRIL 9, 2009 @ 1:00 PM
 () Advance hearing date from individual:
 () Administrative closure
 () Terminate Removal/Deportation Proceedings () with prejudice () without prejudice
 () Extension of time to file:
 () Substitute as Attorney of Record filed by attorney:
 () Reconsider:
 () Telephonic appearance of: ☐ Attorney: ☐ Witness(es):
 () Other:

It is **HEREBY ORDERED** that the above motion/request be ☐ GRANTED ☒ DENIED ☐ DEFERRED based on the reason(s) set forth below:

- ☐ non-moving party was accorded notice and an opportunity to respond.
☐ there was no opposition to the motion/request.
☐ good cause has been established for the above motion/request.
☐ no statement of opposition to the motion/request has been filed with this Court.
☐ although opposition was filed, the Court finds overriding factors in favor of the motion/request.
☒ no good cause has been established for the motion/request.
☐ on account of the reasons set forth in the opposition which was filed.
☐ the Immigration Court does not have jurisdiction to rule on the motion.
☐ Filing(s)/document(s) now due:
☐ Other:

Additional Order (if checked):

☐ counsel will remain the attorney of record for the limited purpose of service of any in absentia order of removal/deportation the Immigration Judge might issue.

Date: 4/8/09

Anthony S. Murry
 ANTHONY S. MURRY
 Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: ☐ MAIL ☐ PERSONAL SERVICES
 TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☐ ALIEN's ATTY/REP ☒ DHS
 DATE: 4/8/09 BY: COURT STAFF

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

D

RONALD E. LE FEVRE
Chief Counsel
PAUL K. NISHIE
Deputy Chief Counsel
SHERRY A. NOHARA
Assistant Chief Counsel
Department of Homeland Security
U.S. Immigration and Customs Enforcement
Office of the Chief Counsel
P.O. Box 26449
San Francisco, California 94126-6449
(415) 705-4003

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

In the Matter of

Jose Luis GUTIERREZ-BLANDON,

Respondent,

In Removal Proceedings

File No.: A200 085 797

Immigration Judge: Hon. Anthony S. Murry

Next Hearing: Apr. 9, 2009, 1:00 p.m.

DEPARTMENT'S OPPOSITION TO RESPONDENT'S MOTION TO CONTINUE

DEPARTMENT'S OPPOSITION TO RESPONDENT'S MOTION TO CONTINUE

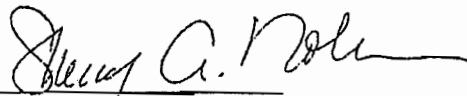
The Department of Homeland Security, U.S. Immigration and Customs Enforcement (Department) opposes the motion to continue, filed by respondent on Mar. 25, 2009 (motion). While the motion asserts that counsel for respondent has been Christopher Stender, *see* motion at 3, Mr. Stender did not appear at the last two master calendar hearings for the respondent, on February 5, 2009 and on February 25, 2009. In addition, on March 25, 2009, the undersigned ~~received a phone call from Mr. Robles (not Mr. Stender), requesting a continuance of these~~ proceedings. Respondent fails to demonstrate why Mr. Robles cannot represent the respondent at his removal hearing on April 9, 2009, as Mr. Robles has acted on behalf of Mr. Stender in the past in these proceedings. The respondent also asserts that a continuance will not prejudice the Department. This is incorrect. The respondent, as an alien who has been convicted of controlled substance offenses, is subject to the mandatory custody provisions of section 236(c) of the Act, and he is being detained by the Department at great expense. A continuance of these proceedings would only inflate this expense.

Finally, the respondent has also submitted supplemental documents in connection with a Form I-485 (Application for Adjustment of Status). However, the respondent appears to be ineligible for the relief of adjustment of status, because he has been convicted of possession of cocaine and is inadmissible to the United States. *See* documents attached to the Department's motion to reconsider custody redetermination, filed on Sep. 3, 2008.

The respondent has been in and out of Immigration Court since August of 2008, due primarily to respondent's repeated contact with local law enforcement. Further delays of his removal proceedings should be avoided. The motion to continue should be denied, and the respondent should be required to proceed with his application for asylum on April 9, 2009 (as respondent's counsel stated he would do at the most recent master calendar on February 26, 2009).

Date: March 27, 2009

Respectfully submitted,



SHERRY A. NOHARA
Assistant Chief Counsel
U.S. Immigration and Customs Enforcement
San Francisco, CA

CERTIFICATE OF SERVICE

I, the undersigned, declare:

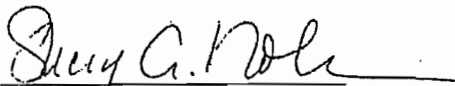
I am a citizen of the United States over the age of 18 years and not a party to the within-entitled action.

~~I am an employee of the U.S. Department of Homeland Security and my business address is 630 Sansome Street, Suite 1155, San Francisco, CA 94111.~~

I served a true copy of the attached **DEPARTMENT'S OPPOSITION TO RESPONDENT'S MOTION TO CONTINUE** by U.S. Mail, full postage paid, addressed as follows:

Christopher J. Stender
Martin Robles
Immigration Practice Group
555 Clay Street
San Francisco, CA 94111

Executed on March 27, 2009 at San Francisco, California.


SHERRY A. NOHARA
Assistant Chief Counsel